IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7949 of 2000
with
SPECIAL CIVIL APPLICATION NO.8099 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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AGRICULTURAL PRODUCE MARKET COMMITTEE
Versus
STATE OF GUJARAT

Appearance:
1. Special Civil Application No. 7949 and 8099 of 2000
MR KS JHAVERI for Petitioner No. 1-15
GOVERNMENT PLEADER for Respondent No. 1-2
RULE SERVED for Respondent No. 3

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 29/04/2002

ORAL JUDGEMENT

In these petitions common questions involved

challenging the notification dated 7.5.2000 issued by the Director of Agricultural Market & Rural Finance for bifurcation of the respective market committee.

2. Heard Mr.Zaveri for petitioners and Mr.M.K.Patel, Ld.AGP for respondents.

3. The short facts of the case are that both the market committees, namely, Agricultural Produce Market Committee, Patan and the Agricultural Produce Market Committee, Borsad have been duly constituted under the provisions of Gujarat Agricultural Produce Markets Act, 1963 (hereinafter referred to as "the Act"). In the year 1997 the State Govt had taken a policy decision for reconstituting certain talukas and districts and the said decision was subsequently reviewed and ultimately in the year 1999 certain talukas were reconstituted and even certain districts were also reconstituted and accordingly revenue limits of those talukas and districts came to be altered. On 17.5.2000 the Dy.Director, Agricultural Marketing & Rural Finance, the respondent No.2 herein, issued notification dated 17.5.2000 in purported exercise of powers under section 5(1) of the Act whereby it is mentioned in the said notification that the talukas and districts which were constituted as per the policy of the Govt in the year 1997 and 1999 the revenue limits thereof were considered for altering in the limits of market area of respective market committees. Therefore, the intention was mentioned and objections were invited for such purpose. Aforesaid notification is also published in the newspapers and as a result thereof having learnt about the aforesaid action the petitioners have preferred these petitions challenging the aforesaid action.

4. Mr.Zaveri for the petitioners submitted that the exercise of powers by the Director under section 5(1) of the Act is absolutely without proper application of mind and is beyond the scope and ambit of the provisions of section 5(1) of the Act in as much as it is obligatory for the Director to consider the case of each market committee separately and to publish a separate preliminary notification for such purpose. Mr.Zaveri, therefore, submitted that since the action is beyond the scope and ambit of section 5(1) of the Act, the notifications which are under challenge deserve to be quashed.

5. Mr.M.K.Patel, Ld.AGP appearing for respondents submitted that it is a preliminary notification and the objections can be filed and the final decision is not taken and therefore these petitions are premature.

Mr.Patel also relied upon the affidavit in reply filed on behalf of the respondents and he drew the attention of this court to the para 6 of the affidavit in reply which is as under:

"I submit that by virtue of the notification declaring preliminary intention there is no intention of directly bifurcating any market committee. The only intention is to learn as to what extent it is convenient if changes are made in any market area."

Mr.Patel, therefore, submitted that the petitioners have chosen not file any objection and he submitted that there is alternative statutory remedy available to the petitioners of revision under section 48 of the Act which is not availed of by the petitioners. Ultimately, Mr.Patel also supported the notification issued by the Director.

6. Section 5 of the Act which is relevant reads as under:

"5.Declaration of intention of regulating purchase and sale of agricultural produce in specified area: (1) The Director may, by notification in the official gazette declare his intention of regulating the purchase and sale of such agricultural produce and in such area, as may be specified therein. Such notification shall also be published in Gujarati in a newspaper having circulation in the area and in such other manner as may be prescribed.

(2) Such notification shall state that any objection of suggestion received by the Director within the period specified in the notification which shall not be less than one month from the date of the publication of the notification, shall be considered by the Director.

(3) The Director shall also send a copy of the notification to each of the local authorities functioning in the area specified in the notification with a request to submit its objections and suggestions, if any, in writing to the Director within a period specified in the notification."

For interpreting section 5 of the Act, it would be necessary to consider the provisions of Subsection (5) of Section 6 which reads as under:

> "6(5) After declaring in the manner specified in section 5 his intention of so doing, and following the procedure therein, the Director may, at any time by notification in the official gazette exclude any area from a market area specified in a notification issued under subsection (1) or include any area therein and exclude from or add to the kinds of agricultural produce so specified any kind of agricultural produce. A notification under this subsection shall also be published in Gujarati in a newspaper having circulation in the said area and in such other manner as may be prescribed."

7. Upon combined reading of section 5 read with section 6(5) of the Act it transpires that the Director by preliminary notification has to declare his intention of excluding and/or including certain areas in the limits of market area of the respective market committee. Therefore, Mr.Zaveri is right in submitting that each case of each market area for concerned market committee is to be considered and there can not be any wholesome exercise of power. A perusal of the scheme of the Act shows that before declaring the intention, it is necessary for the Director to consider the case of each market committee and to declare intention. After inviting objections, final notification would be required to be published under section 6(5) of the Act. What has been done in the present case is that relying upon the alterations of revenue limits and constitution of various talukas and districts in the year 1997 and 1999 the Director has issued a general notification of declaring the market area in conformity with the aforesaid decision of the State Govt for alteration of revenue limits of various talukas and districts. I am of the view that it is not necessary that in every case the revenue limits would be the limits of market committee. It varies from facts of each case and also the location and cultivation of agricultural produce in the area and also the convenience of agriculturists etc. Each case is to be examined independently for the purpose of constituting or reconstituting the market area for each market committee. In the present case since the case is not considered independently of each market committee, I am of the view that exercise of powers under section 5(1) is beyond the scope and ambit of the provisions of section 5(1) of the

Act. Therefore, the impugned notification deserves to be quashed on the said ground alone.

8. At the same, it can not be said that the Director can not consider each case of the market committee and therefore the liberty should be reserved to the authority to consider each case of the market committee for alteration of limits of market area if permissible in accordance with law.

9. In the result, notification dated 17.5.2000 at annexure "A" is quashed by allowing both the petitions with a clarification that it will be open to the Director to consider the case of each market committee for alteration of limits of the market area in accordance with law.

10. In the result, rule in each petition is made absolute accordingly. There shall be no order as to costs.

29.4.2002 (JAYANT PATEL,J)